STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
(Smolenski, P.J., and Schuette and Borrello, JJ.)

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Michael Francis Spitzley, Personal Representative of the Estate of David A. Spitzley,

Plaintiff-Appellee,

vs.

Thomas P. Spitzley and Kimberly S. Spitzley,

Defendants-Appellants.

Supreme Court No. 130585

Court of Appeals No. 255345

Trial Court No. 03-9578-CZ

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# APPELLANTS' SUPPLEMENTAL BRIEF

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Suppl


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## INTRODUCTION

This appeal arises from the Trial Court's sanctions against Appellants/Defendants Thomas P. Spitzley and Kimberly S. Spitzley ("Defendants-Buyers"), and their attorney, Michael A. Faraone. The underlying dispute is between Defendants-Buyers and Michael F. Spitzley, as personal representative of the Estate of David A. Spitzley ("Plaintiff" or "Estate") regarding a deed conveyance of 40 acres of farmland.

This Supplemental Brief responds to the Michigan Supreme Court's Order dated June 2, 2006, ordering oral argument on Defendants-Buyers' Application for Leave to Appeal, and allowing the parties to file supplemental briefs on four specific issues:

> (1) whether any of the Michigan authority asserted by Defendants-Buyers supported their position that they were entitled to the disputed 40-acre parcel of farmland;
>
> (2) whether the non-Michigan authority on which Defendants-Buyers relied in their counter-complaint presented a good-faith argument for the extension, modification, or reversal of existing law under MCR 2.114(D);
>
> (3) whether the circuit court correctly ruled that "Defendants have not presented . . . any documentary evidence that supports their position"; and
>
> (4) whether sanctions were properly awarded against Defendants-Buyers under MCR 2.114(E).

Defendants-Buyers address questions (1), (2), and (3) in this Supplemental Brief, and reserve their response to question (4) for oral argument.

## ARGUMENT

### I. The authority that Defendants-Buyers cited in the Trial Court supports their position that they were entitled to the 40-acre parcel conveyed by the deed.

#### *A. Defendants' authority demonstrated that the unambiguous deed in this case must be construed to give effect to the face of the document, which conveyed the 40-acre parcel.*

Defendants-Buyers illustrated that they were entitled to the disputed parcel by citing cases regarding how a deed conveying property should be construed. (Defendants-Buyers' Summary Disposition Brief at 1) Specifically, a deed should be strictly construed against the grantor to give the grantee the greatest estate the deed will permit. *Thomas v Steuernol*, 185 Mich App 148, 155; 460 NW2d 577 (1990) (citing *State Hwy Comm'r v Simmons*, 353 Mich 432, 437; 91 NW2d 819 (1958)). The *Thomas* case held that any interest that is not to be conveyed in a deed must be "expressly excepted or reserved" and that this exception or reservation is also strictly construed against the grantor. *Thomas, supra* at 155 (citing *State Hwy Comm'r, supra* at 437 and *Stevens Mineral Co v State*, 164 Mich App 692, 697-98; 418 NW2d 130 (1987), *lv den*, 430 Mich 896)).

Other Michigan Supreme Court cases have adopted the principle stated in *Thomas* upon which Defendants-Buyers' relied. *See Reed v Mack*, 344 Mich 391, 397; 73 NW2d 917 (1955) (holding that conveyed and recorded deed is construed against the grantor); *Hogan v Egyptian Portland Cement Co*, 257 Mich 381, 384; 241 NW 129 (1932) (determining grantor parts with his entire legal interest in property when he executed and delivered deed).

Defendants-Buyers also cited *Juif v State Highway Commissioner*, 287 Mich 35; 282 NW 892 (1939), for the proposition that when an unambiguous deed includes the legal description for the property in controversy, then the alleged intention of the grantor is

immaterial and the legal description in the deed controls. *Id* at 40-41. In *Juif*, the grantor conveyed a strip of property with a reservation that the strip must be used for "railway purposes, only." *Id* at 37. A few years later, the grantor conveyed the strip of land to a husband and wife through two warranty deeds. *Id.* At some point prior to the litigation, the State had ceased to use the property for railway purposes and grantor's heirs sued to have the property revert to the estate of the grantor. *Id.* The subsequent warranty deeds were found to extinguish the possibility of reverter as to the decedent's estate, and therefore the heirs did not inherit the strip of land. *Id* at 38-39. The heirs then attempted to argue that the description of the property in the two warranty deeds was ambiguous. *Id* at 40. The Court stated that, absent ambiguity, "it must be said that the grantor intended to convey that which he described." *Id* at 41. The Court ruled that because the deeds were not ambiguous, evidence of the grantor's intent was not admissible. *Id.*

Many Michigan courts have espoused similar legal analysis as *Juif*, and as cited by Defendants-Buyers in the Trial Court. For instance, where a deed is unambiguous, then the court must only consider the plain language of the deed. *Taylor v Taylor*, 310 Mich 541, 545; 17 NW2d 745 (1945). Moreover, Michigan courts determine the intent of the grantor from the instrument conveying the property; the language in the instrument is "taken most strongly against the grantor." *Bolio v Marvin*, 130 Mich 82, 83-84; 89 NW 563 (1902); *Old Mission Peninsula Sch Dist v French*, 362 Mich 546, 551-52; 107 NW2d 758 (1961). In *Bolio*, the Michigan Supreme Court compared a deed that failed to include an exception for certain property, with deeds in earlier cases that did contain exceptions or reservations. The *Bolio* Court construed the deed against the grantor who had failed to include an exception; thus, the grantee received all property named in the deed without reservation. *Bolio, supra* at 83-84.

The Michigan Supreme Court outlined the rules of construction for deed conveyances in *Purlo Corp v 3925 Woodward Ave, Inc*, 341 Mich 483, 487-88; 67 NW2d 684 (1954). Conforming with prior precedent, the Supreme Court in *Purlo* focused on the actual deed, as illustrated below:

> (1) In construing a deed of conveyance[,] the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof; (2) in arriving at the intent of parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful; (4) the only purpose of rules of construction of conveyances is to enable the court to reach the probable intent of the parties when it is not otherwise ascertainable.

*Purlo, supra* 487-88.

Defendants cited *Kollen v Sooy*, 172 Mich 214, 219; 137 N.W. 808 (1912), for the proposition that an individual who records a deed is bound by its terms. While *Kollen* does not contain that precise statement, *Kollen* still supports Defendants-Buyers' position that the recording of the Personal Representative's Deed bound Plaintiff to its terms and therefore Defendants are entitled to the 40 acres. The Supreme Court in *Kollen* held that a grantee's acceptance of a deed with an express provision that the grantee should assume and pay a prior mortgage binds the grantee to that mortgage. *Id* at 219.

Even a cursory examination of the recorded deed in this case shows that Plaintiff conveyed a house with a 40-acre parcel to Defendants-Buyers. (Application, Exhibit A) Contrary to Plaintiff's contention, the intent of the parties is ascertainable from the face of the deed. If such an intent was not within the contemplation of both parties it would have been very easy for Michael Spitzley to ask the Estate's attorney to draft the deed so as to specifically exclude or reserve the 40-acre parcel from the deed. It is noteworthy that,

while the Estate was represented by counsel when it conveyed the deed, Defendants-Buyers were not represented by counsel. (10/9/03 Tr. at 11 ) If the Trial Court had strictly construed that deed against the grantor, as Michigan case law instructs, then Defendants-Buyers would be entitled to the land described in the deed. But even if the Trial Court determined that the deed was ambiguous, allowing it to turn its attention to parol evidence, the documentary evidence demonstrated that the parties intended to convey the 40-acre parcel, as discussed in Section III.

Applying the rules of construction to this case, and upon verifying that the legal description in the deed includes the 40-acre parcel, the intent of the Plaintiff to sell and Defendants-Buyers to purchase the 40-acre parcel swiftly emerges. Defendants-Buyers have shown that their cited case law supports the proposition that the Defendants-Buyers are entitled to the 40-acre parcel described in the deed that was conveyed to them.

### *B. Defendants-Buyers cited sufficient Michigan authority to overcome Plaintiff's claim for reformation on the ground that the Plaintiff mistakenly included the 40-acre parcel in the Personal Representative's Deed*

In his effort to controvert the plain language of the deed, Plaintiff alleged that he was entitled to reformation of the deed due to mistake and argued that he did not intend to relinquish his title to the 40-acre parcel when the Estate sold the home conveyed to Defendants-Buyers. (Plaintiff's Motion for Summary Disposition at 6, 8) Defendants-Buyers' authority addresses why Plaintiff's intent, as the grantor of the property, is irrelevant (*Juif*) and why the deed is construed against the grantor (*Christensen*). *Juif*, *supra* at 40-41; *Christensen v Christensen*, 126 Mich App 640, 645; 337 NW2d 611 (1983). *Christensen* relies on Michigan Supreme Court authority to reach the conclusion that the

grantor is accountable for executing a deed without inquiring as to its contents. *Christensen, supra* at 645 (citing *Richeson v Wagar*, 287 Mich 79, 84-85; 282 NW 909 (1938); *Sanborn v Sanborn*, 104 Mich 180, 184; 62 NW 371 (1891)). The *Christensen* case firmly supports Defendants-Buyers' reliance on the written deed and strengthens Defendants-Buyers' argument that the deed should not have been reformed.

Plaintiff's argued that the Trial Court should consider extrinsic evidence to discern Plaintiff's intent in conveying the deed to Defendants-Buyers. Defendants-Buyers cited authority for the well-accepted proposition that the parol evidence rule prohibits extrinsic evidence to contradict the terms of a deed. *Tepisch v Howe Constr Co*, 373 Mich 404, 407; 129 NW2d 398 (1964), *rev'd on reh'g*, 377 Mich 18; 138 NW2d 376 (1965). While the *Tepisch* Court reversed its decision upon rehearing of the case, the *Tepisch* opinion cited by Defendants-Buyers is still good law for the basic proposition about parol evidence and deeds. Furthermore, *Tepisch* relied on earlier Supreme Court authority, which also bolsters Defendants-Buyers' argument. For example, in *Wild v Wild*, 266 Mich 570, 577; 254 NW 208 (1934), the Michigan Supreme Court held, in reference to a quitclaim deed, that "when parties to a contract or agreement deliberately reduced it to writing, executed with the formalities of a deed, it is so conclusively presumed to embody the whole contract that parol evidence is inadmissible to contradict it or add to its terms."

Defendants-Buyers understood that there are exceptions to the parol evidence rule, such as to reform a deed where fraud or mutual mistake is shown, and cited authority for these exceptions. (Defendants-Buyers Motion for Summary Disposition at 3-4) *Bennett v Eisen*, 64 Mich App 241, 244; 235 NW2d 749 (1975); *Youell v Allen*, 18 Mich 107, 109; (1869). Prior to *Bennett*, the Michigan Supreme Court decided in *Stevenson v Aalto*, 333 Mich 582, 589; 53 NW2d 382 (1952), that reformation for mistake requires the mistake to

be both mutual and common to both parties to the instrument. *Stevenson, supra* at 589; *Robertson v Smith*, 191 Mich 660, 666-667; 158 NW 207 (1916) (holding plaintiff failed to prove mutual mistake when plaintiff alleged that inclusion of a strip of land in deed was due to a drafting mistake). Defendants-Buyers also cited authority for the well-known proposition that the burden of establishing the mistake is on the party seeking reformation, and that party must show the mistake by clear and convincing evidence. (Defendants-Buyers Motion for Summary Disposition at 4) *Burns v Caskey*, 100 Mich 94, 100-101; 58 NW 642 (1894), *followed by Kinyon v Cunningham*, 146 Mich 430, 432, 435; 109 NW 675 (1906) (purchaser's unilateral mistake as to the conveyance of certain sheds did not merit reformation of deed that conveyed property without the sheds) *and Dillie v Longwell*, 163 Mich 439, 443-444; 128 NW 782 (1910) (holding that grantee failed to present clear and satisfactory proof that deed should have conveyed four parcels rather than three parcels stated on face of the deed); *Youell, supra* at 109 (evidence of mistake "ought to be so clear as to establish that fact beyond cavil").

*Burns* and its progeny are important to Defendants-Buyers' underlying disagreement with Plaintiff's contention that a mistake had occurred. Defendants-Buyers' evidence demonstrated that if there was any mistake, then it was the *unilateral mistake* of Plaintiff and that Plaintiff's mistake was a legal one. *Burns, supra* at 101 (Defendants-Buyers Motion for Summary Disposition at 4) Plaintiff urged the Trial Court to set aside the deed because the Estate did not own the 40-acre parcel and because Michael Spitzley's signature on the deed as a personal representative did not bind him as an individual. (Plaintiff's Motion for Summary Disposition at 8) The documentary evidence in this case, such as the signed purchase agreement and mortgage, further corroborate the conveyance granted by the deed and demonstrate that there was no mistake when Plaintiff conveyed

the 40-acre parcel. (Application, Exhibits E and K)

Defendants-Buyers paid Plaintiff additional consideration for the 40-acre parcel, and in exchange, Michael Spitzley had the burden of a mortgage lifted from his shoulders that he was otherwise obligated to pay. (Application, Exhibit K) Under the pretense that Plaintiff did not convey land describe in the deed (contrary to the written evidence), Plaintiff sought to keep that consideration paid by Defendants-Buyers and also retain ownership of the 40-acre parcel. The Trial Court ruled that the 40 acres was conveyed by mistake and allowed Michael Spitzely to obtain ownership of the 40-acre parcel, while not reimbursing Defendants-Buyers for the additional consideration that they paid for those 40 acres. Then to add insult to injury, the Trial Court sanctioned Defendants-Buyers and their attorney for allegedly filing a frivolous claim. Based on the cases cited by Defendants-Buyers, at minimum, they made a good faith argument that they were entitled to the 40-acre parcel because the deed unambiguously conveyed a house plus the 40-acre parcel; there was no mutual mistake to justify the consideration of parol evidence to contradict that deed; but even if there were a mistake, the evidence in the record demonstrated that the mistake was unilateral as to Plaintiff.

The cases that Defendants-Buyers cited in the Trial Court, coupled with the evidence, supported their argument that Plaintiff was not entitled to reformation on the grounds of mutual mistake. But even though the cited authority did not persuade the Trial Court to rule in Defendants-Buyers' favor, then at the very least, the cited case law satisfied the good faith requirement of MCL 600.2591(3)(a).

## II. The non-Michigan case law that Defendants-Buyers cited supports their good-faith argument for an extension or modification of Michigan law.

The Trial Court determined that Defendants-Buyers improperly relied on foreign authority and that the foreign authority was contradicted by controlling Michigan law. (Application, Exhibit B at 2) The Trial Court's reliance on authority holding that one cannot convey more than he has the right to convey was misplaced. (Application, Exhibit B at 2) The issue in this case is not whether Plaintiff-Estate had the right or the authority to convey the 40-acre parcel. The issue here is–in spite of the fact that the Estate did not own the 40-acre parcel that it conveyed in the Personal Representative's Deed–whether Michael Spitzley, as personal representative of the Estate, conveyed both the Estate's interest and his own personal interest in the property when he signed the Personal Representative's Deed as personal representative of the Estate. After an exhaustive search of Michigan law on this narrow issue, both the trial counsel and appellate co-counsel for Defendants-Buyers concluded that this is an issue of first impression in Michigan.

### A. Foreign jurisdictions presented with the issue overwhelmingly allow the conveyance of a fiduciary's personal interest when the fiduciary signs a deed in his representative capacity that purports to convey the entire property without reservation

Although the issue has not been previously addressed in Michigan, other states have addressed the issue rather persuasively. To that end, Defendants-Buyers cited secondary authority from American Jurisprudence ("AmJur") to support Defendants-Buyers good-faith argument that Michigan should modify or extend its laws to incorporate the narrow rule on personal representatives, as noted above. AmJur is a continually updated compilation of articles analyzing cases on every legal subject, from every jurisdiction with a decision on the subject. AmJur endeavors to make a general statement of the law in the

country based on the jurisdictions that have ruled on that particular issue.

The AmJur chapter on estoppel and waiver notes that "a person who, acting in a representative capacity, executes a conveyance of land, without reservations, which purports to convey the entire property or fee in the property, or which represents that the title is in another, is estopped to claim in his individual capacity an interest in the property." 28 Am Jur 2d, Estoppel and Waiver, § 12 (2005). AmJur elaborates on this legal tenet by noting that "[t]he rule, that persons in a representative capacity are estopped to assert an individual interest in the property is especially applicable where the conveyance executed in such representative capacity contains covenants of warranty, is a sale and conveyance of the entire estate, or where it appears that full value was received for the property, including the personal interest of the party executing the conveyance." *Id.*

Likewise, the AmJur chapter on deeds states that

> Where a grantor, acting as executor or administrator of a decedent, assumes to convey an estate by deed warranting or importing a representation that he has good right to convey the entire estate, he is estopped from subsequently asserting that the estate conveyed did not pass by his deed. The deed will be held to pass any interest in the land that the grantor may have had in his individual capacity at the time of the deed as heir or otherwise in his own right.

23 Am Jur 2d, Deeds, § 289 (2005) (internal citations omitted).

As noted by the AmJur sections upon which Defendants-Buyers relied, many jurisdictions–including Texas, South Dakota, and Wyoming–have adopted the rule that a fiduciary is estopped from claiming he did not convey his own personal interest in property when the fiduciary signs the deed in his representative capacity. *See Millican v McNeill*, 114 SW 106, 107 (Tex 1908); *Bliss v Tidrick*, 127 NW 852, 855 (SD 1910); *Black v Beagle*, 139 P2d 439 (Wyo 1943).

In *Millican*, the administrator of an estate personally owned a one-sixth life estate

interest in that estate. *Millican, supra* at 107. Subsequently, the administrator conveyed the estate's property through a deed that appeared to convey the entire estate. *Id* at 107. The Supreme Court of Texas concluded that the administrator conveyed the entire estate–even that part of the estate to which the administrator personally held a one-sixth life estate interest–because the administrator owned the life estate when he made the deed. *Id* at 107. Moreover, at the time of the deed conveyance, the administrator in his individual capacity had "full power to convey" his own one-sixth life estate. *Id* at 107. The Court determined that it would be fraud to allow the administrator to convey the entire estate and later claim his personal interest was not also conveyed by the deed. *Id* at 107. The *Millican* Court relied on foreign jurisdictions, including decisions from the Supreme Court of Vermont and the Supreme Court of Alabama. *Id* at 107 (citing *Brown v Edson*, 23 Vt 435, 449 (1851) (holding that, where administrator of estate actually owned conveyed property rather than the estate, the administrator is estopped from denying that his own property had been conveyed); *Phillips v. Hornsby*, 70 Ala 414, *2 (1881) (holding that executrix of estate was estopped to deny the transfer of her own property when she signed deed in her capacity as executrix)).

In *Bliss*, the administratrix of decedent's estate sold a parcel of real property when she personally owned a undivided one-third interest in that same property. *Bliss, supra* at 852-853. The South Dakota Supreme Court concluded that the administratrix was estopped to question the validity of the deed as to her own rights in the property or to set forth any rights which she was personally vested at the time of executing the deed. *Id* at 853. The Court reached this conclusion by examining foreign authority from the Supreme Courts of Massachusetts and Maine. *Id* at 853 (citing *Sumner v Williams*, 8 Mass 162, 209 (1811) (holding that where one purports to warrant or covenant in a representative capacity

when one is not authorized to do so, the warrant or covenant personally binds himself to the contract); *Allen v Sayward*, 5 Me 227 (1828) (holding executor who conveys an estate binds the executor, even where the executor purports to convey the property as executor)).

Finally, in *Black*, the Supreme Court of Wyoming held that an administrator of an estate is estopped in his personal capacity from denying the conveyance of property that the administrator performed in his representative capacity. *Black, supra* at 444. The Court in *Black* also relied on authority from the Supreme Court of Nebraska and the Supreme Court of Massachusetts. *Id* at 444 (citing *Wells v Steckelberg*, 72 NW 865, 866 (1897) (determining that father of infant was estopped from setting up his own life estate conveying plaintiff's fee and not merely the child's interest in the property); *Poor v Robinson*, 10 Mass 131, 136 (1813) (deciding that release created by executors of an estate was found void because their purported power under the will did not extend to that property and since the executors were also heirs, they were estopped from setting up title against the release)).

*Millican*, *Bliss*, and *Black* provide a persuasive basis for Defendants-Buyers' argument that this rule of law should be adopted by the Michigan Supreme Court, which has been silent on the issue. The disputed 40-acre parcel was conveyed by the personal representative in his fiduciary capacity (similar to an executor or administrator). (Application, Exhibit A) Like the deeds conveyed in the above-referenced foreign cases, the deed in this case purported to convey the whole property. The documents relating to that conveyance and the deed itself represent Michael Spitzley's authority and intent to convey all of the property described in the deed. Consequently, under the persuasive foreign authority that Defendants-Buyers urged the Trial Court to adopt, Michael Spitzley would have been estopped from claiming that he did not convey his personal interest when

he signed the deed in his representative capacity.

By citing these two AmJur sections, Defendants-Buyers presented a good-faith argument for the modification or extension of Michigan law on a narrow issue which has never before been addressed by Michigan courts. MCR 2.114(D)(2). In particular, the AmJur sections on Estoppel and Waiver and Deeds tie in with the authority Defendants-Buyers cited above in Section I-A regarding grantor's obligation to include a reservation or exception in the deed for the property if the grantor desires to hold back any part of the conveyed estate. *Thomas, supra* at 155; *Juif, supra* at 40-41. Applying the *Thomas* and *Juif* cases to the narrow issue at hand, Defendants-Buyers appropriately argued that, if the personal representative intended to only convey what the Estate owned, he should have included a reservation or exception as to any property individually owned by him, Michael Spitzley, when he signed the deed in his representative capacity. (Application, Exhibit A)

In addition, Defendants-Buyers' citation to authority, as noted above in Section I-A, regarding the construction of an unambiguous deed, supports Defendants-Buyers' reliance on the AmJur section on Estoppel and Waiver. The Personal Representative's Deed purported to convey the entirety of the house and 40-acre parcel in fee simple. (Application, Exhibit A) As stated in AmJur, a deed without reservations that "purports to convey the entire property or the fee in the property" does indeed convey the entire property. 28 Am Jur 2d, Estoppel and Waiver, § 12. This principle of law ties in with Defendants-Buyers citation of *Thomas, supra* at 155 and *Christensen, supra* at 645.

The AmJur section on Estoppel and Waiver also ties into Defendants-Buyers' factual presentation in this case. That section notes that the personal representative cannot disclaim having deeded his own personal interest when it is a "sale and conveyance of the entire estate" or "where it appears that full value was received for the

property." 28 Am Jur 2d, Estoppel and Waiver, § 12. Here, the Personal Representative's Deed on its face shows that it conveyed the entire estate–both the house and the 40-acre parcel. (Application, Exhibit A) Accordingly, Defendants-Buyers obtained a mortgage for the entire estate. (Application, Exhibit K) The purchase price of $109,000 stated in the deed further reflects that Defendants-Buyers paid full value for the house and 40-acre parcel. (Application, Exhibit A) The house alone had been appraised for $83,000. (Plaintiff's Motion for Summary Disposition, Exhibits N and O) The purchase agreement dated September 17, 2002 noted the $109,000 purchase price, and gave Defendants-Buyers a 25% credit to reflect their share of the proceeds by inheritance for the sale of the property. (Application, Exhibit E) The facts supported Defendants-Buyers' good faith argument to extend or modify Michigan law as noted by the cases cited in AmJur.

Taking the AmJur sections which represent a narrow issue of law not previously addressed in Michigan, together with the Michigan authority that arguably relates to that narrow proposition of the effect of a personal representative conveying property for an estate in which he also holds an individual interest, Defendants-Buyers made a good-faith argument for the extension or modification of Michigan law. In addition, Defendants-Buyers acted professionally in the Trial Court by providing the Trial Court with a complete copy of the AmJur sections noted above. (10/9/03 Tr at 16) Those AmJur sections notably provide examples of jurisdictions who have not followed the generally-accepted law on the effect of a personal representative's deed of property. Defendants-Buyers' attorney further demonstrated his good faith argument and observance of professionalism by sharing the entire AmJur section with the Trial Court. MRPC Rule 3.1(a)(3).

### B. Defendants-Buyers' cited foreign authority is not contradicted by controlling Michigan law

The Trial Court stated that it sanctioned Defendants-Buyers for relying on foreign authority when Plaintiff had cited controlling and contrary case law on the property issue involved in this case. (Application, Exhibits B) However, the cases cited by Plaintiff are inapposite to the case at bar. In fact, those cited cases fail to even remotely address the narrow and undecided question of law involved presently before this Court. As previously stated, this Court is faced with the narrow and undecided question: Is a personal representative estopped from denying he conveyed property in a Personal Representative's Deed when he signed the deed in his personal representative capacity because he individually held an interest in the conveyed property?

First, Plaintiff cited *Kirchen v Remenga*, 291 Mich 94; 288 NW 344 (1930), for the proposition that title to land may not rest on estoppel. (Plaintiff's Motion for Summary Disposition at 8) Yet *Kirchen* has no bearing on the narrow issue before this Court today. *Kirchen* arose from a dispute about land originally platted as a park for public use and then later sold in lots to citizens who used the land for various purposes. While the *Kirchen* case cited a relevant encyclopedia entry stating that a grantor could only convey that which he had a right to convey, the *Kirchen* Court did not mention fiduciary capacity, a Personal Representative's Deed, or delve into any discussion of the effect of a fiduciary conveying the property in his fiduciary capacity when he also holds a personal interest in the same property. *Kirchen, supra* at 110.

Likewise, the Plaintiff's reliance on *Vobless v Weisenthal*, 293 Mich 565; 292 NW 493 (1940), is misplaced. Plaintiff cited *Vobless* for the proposition that title to real estate may not rest in parol evidence or oral grant. (Plaintiff's Motion for Summary Disposition at

7) *Vobless* does not analyze whether or not a person can sign over his personal interest in real property while acting as a fiduciary or personal representative of a decedent's estate. Instead, in *Vobless*, the grantee of an undivided one-half interest in property was also acting as the grantor's agent for the entire property. The grantor claimed that the grantee-agent failed to perform duties that the grantee-agent had verbally promised to do at the time the deed was conveyed. *Id* at 566. The grantor, therefore, sought a reformation of the deed so that the grantee-agent would no longer hold the one-half interest in the conveyed property. *Id* at 566.

The Michigan Supreme Court in *Vobless* held that a grantee-agent had acquired the one-half interest in the property through the grantor's deed, and the fact that the grantee also acted as the grantor's agent did not prevent title from passing to the grantee-agent for that one-half interest noted in the deed. *Vobless, supra* at 570. The *Vobless* Court concluded that the deed which grantor conveyed was unambiguous and could not be set aside absent fraud or mistake. *Id* at 570.

Contrary to Plaintiff's assertion, the holding in *Vobless* supports Defendants-Buyers' case. Plaintiff conveyed a deed conveying both the house and a 40-acre parcel of land. The fact that the Defendants-Buyers paid a higher sum than what the parties had agreed to in the original purchase proposal indicates an intent consistent with the deed to convey the house plus 40 acres. In addition, the Defendants-Buyers assumed the mortgage that Michael Spitzley was required to pay if he wanted to prevent the 40-acre parcel from reverting to his father's estate. It is Plaintiff–not Defendants-Buyers–who are relying on "parol evidence or oral grant" to contradict the deed in this case.

Finally, Plaintiff incorrectly asserts that *Thurn v McAra*, 374 Mich 22; 130 NW2d 887 (1967), defeats Defendants-Buyers claims to the 40-acre parcel. (Plaintiff's Motion for

Summary Disposition at 7) In *Thurn*, the decedent made an oral declaration that he wanted his five daughters and one step-daughter to share his estate. *Id* at 27. The decedent died intestate shortly after making this declaration. *Id.* After his death, the step-daughter, relying on the oral agreement, sued to obtain her share of the estate's property through a constructive trust. *Id* at 27-28. However, the Michigan Supreme Court declined to set aside intestacy laws because their was no evidence that the decedent failed to execute a will due to his "misplaced reliance" on his daughters' agreement to apply his property to the equal benefit of all his daughters, including the step-daughter who was not entitled to an interest in the decedent's estate under the laws of intestate succession. *Thurn, supra* at 29.

Although *Thurn* states the rule that transfers of land be in writing, it does not aid the analysis of the instant case because the conveyance in this case is not based on oral promises, but on the written deed that was signed by Michael Spitzley. The instant case is also distinct from *Thurn* because in *Thurn* there was no will or other writing conveying the property; the step-daughter solely relied on the decedent's and daughters' oral representations. Here, however, the personal representative executed a written deed in his representative capacity and then recorded the deed with the Clinton County Register of Deeds. (Application, Exhibit A)

Finally, Plaintiff argues that the statute of fraud nullifies the conveyance between Plaintiff and Defendants-Buyers because the deed was only signed by Michael Spitzely in his personal representative capacity and not in his individual capacity. (Plaintiff's Motion for Summary Disposition at 7-8) MCL 566.106, 566.108. While it is true that the statute of frauds requires that conveyance of land be in writing, the statute of frauds does not act as a bar to the conveyance in this case. Contrary to Plaintiff's assertions, the deed in this

case was in writing and was signed by Michael Spitzley, albeit in his capacity as personal representative. (Application, Exhibit A) The effect of Michael Spitzely signing the deed as a representative is further examined in Section II of this Supplemental Brief. Regardless of the capacity in which Michael Spitzley signed the deed, it is undisputed that the deed bears his signature. It is illogical to apply the statute of frauds to a conveyance of land when the conveyance is in writing and signed.

As previously stated, Defendants-Buyers raised a good-faith argument for the extension or modification of Michigan law based on foreign authority from the States of Texas, South Dakota, Wyoming, to name a few. The Michigan case law cited by Plaintiff does not contradict the foreign authority that Defendants-Buyers presented to the Trial Court. Instead, those Michigan cases do not remotely weigh in on the narrow issue of the effect of the personal representative's deed, as argued by Defendants-Buyers and supported by foreign authority.

Moreover, the only Michigan case that co-counsel could locate that even remotely addresses the issue cited in the foreign authority supports Defendants-Buyers' good-faith argument for the extension or modification or Michigan law on this narrow issue of law. In *Greenberg v Mosley's Estate*, 284 Mich 683, 684; 279 NW 904 (1938), an executor of an estate who was also a beneficiary under the decedent's will, conveyed a deed to the assignee of a land contract vendee. *Id* at 684. The deed recited that it was made pursuant to the land contract and that "there is at this date unpaid on said contract nothing dollars." *Id.* The executory-beneficiary was later replaced by a different executor. The new executor and the executor-beneficiary attempted to contradict the deed, claiming that money was still owing under the land contract. *Id.*

The Michigan Supreme Court noted that, the former executor, as the residuary

beneficiary of decedent's estate, would be the "recipient of that benefit" if the new executor was successful in his challenge of the deed. *Id* at 686. The Court presumed that the executor-beneficiary properly performed his duty when he executed the deed that recited that there was nothing due on the land contract. *Id* at 687. The Michigan Supreme Court held that "[the executor-beneficiary] ought not to be permitted to contradict the recitals of the deed made, executed, acknowledged and delivered by him to [the assignee of the land contract vendee], to disparage the title which he purported to convey to him." The Court concluded that to allow the executor-beneficiary to testify that the land contract had not been paid in full "would enable [the executor-beneficiary] to impair the title he conveyed and contradict the terms of the written instrument which he executed." *Id* at 687.

Just as the executor-beneficiary in *Greenberg* was prevented from questioning the validity of a deed that he conveyed as executor and from which he would personally benefit as beneficiary if his challenge were successful, the foreign authority cited in Section II-A held that the fiduciary is estopped from disclaiming a deed as to his personal interest when the fiduciary conveys the deed in his representative capacity. *Greenberg, supra* at 687; *Millican, supra* at 107; *Bliss, supra* at 853; *Black, supra* at 444. The Michigan Supreme Court's decision in *Greenberg* further establishes that Defendants-Buyers made a good faith argument for the extension or modification of Michigan law. MCR 2.114(E). Contrary to the conclusion of the Trial Court, the Defendants-Buyers' argument was not devoid of arguable legal merit and Defendants-Buyers' citation of foreign authority did not contradict controlling Michigan law.

## III. Defendants-Buyers presented at least some documentary evidence to support their legal argument that they were entitled to the parcel contained in the deed.

There is no question that Defendants-Buyers provided documentary evidence to show that they were entitled to the parcel deeded to them. The most important piece of evidence is the Personal Representative's Deed itself. (Application, Exhibit A) Coupled with Michigan case law discussed in Section I regarding proper interpretation of deeds, the proper burden of proof, and the legal description that includes the 40-acre parcel, there is strong evidence to support Defendants-Buyers' argument that Michael Spitzley conveyed the house and the 40-acre parcel to Defendants-Buyers. Plaintiff does not dispute that the face of the Personal Representative's Deed conveys the 40-acre parcel. Taking this one piece of evidence, without more, is sufficient for Defendants-Buyers to overcome the Trial Court's ruling that their case was not supported by "any documentary evidence." (Application, Exhibit B at 2)

Yet Defendants-Buyers did not simply rest on the deed; they provided additional documentary evidence to the Trial Court. First, the mortgage, the second purchase agreement, and the deed all show a drastic increase in the purchase price from the parties' initial negotiations ($65,000) to the final purchase price ($109,000). (Application, Exhibits K, E, and A) The written documentation showing an increase in purchase price supports the Defendants-Buyers' assertion that the increased price represented the additional consideration for the 40-acre parcel. The initial purchase offer noted that the house alone had only been appraised for $83,000. (Plaintiff's Motion for Summary Disposition, Exhibits N and O) The only logical explanation for the substantial increase in the purchase price is that Defendants-Buyers ultimately purchased exactly what the deed states: a house plus 40 acres.

Second, a letter from the Estate's attorney states that the 40-acre parcel would transfer to Michael Spitzley on the condition that he pay off the mortgage. (Application, Exhibit F). This letter, thus, indicates that the 40-acre parcel was part of the Estate until Michael Spitzley assumed the mortgage. (Application, Exhibit F) However, Michael Spitzley did not assume that mortgage and instead, Defendants-Buyers assumed the mortgage. (Application, Exhibit K). The only fair conclusion is that Defendants-Buyers are the owners of the land that was deeded to them. Since there is no evidence showing that Michael Spitzley intended to pay off the mortgage, this document supports the argument that Defendants-Buyers were entitled to the property because it remained in the estate.

Third, the Defendants-Buyers' mortgage attaches a legal description that includes the 40-acre parcel. (Application, Exhibit K) The mortgage supports the Defendants-Buyers' intent to purchase the property as stated in the Personal Representative's Deed: the house plus 40 acres. (Application, Exhibits K and A)

These documents tell the tale of a negotiated agreement between two consenting parties for property described in those documents. The Defendants-Buyers also submitted various affidavits to the Trial Court, which corroborated Defendants-Buyers' argument that neither party was confused as to the fact that the 40-acre parcel was conveyed and Defendants-Buyers had assumed the mortgage. (Application, Exhibits G-K) The affidavit of Theresa Jacobs, the closing agent, shows Plaintiff and the co-personal representative, Lisa Spitzley-Klein, were not confused and did not have any questions at the closing when they signed the deed that included a description for the 40-acre parcel. (Application, Exhibit I) The affidavit of Cameron Chapin, who oversaw the mortgage process, averred that Defendants-Buyers stated to her before closing that it was their understanding that they were purchasing a house and a 40-acre parcel. (Application, Exhibit H) Ms. Chapin

also noted that, because the legal description in the note and the loan documents reflected 40 acres, that it was reasonable for Defendants-Buyers to assume that the mortgage was for the house and 40 acres. (Application, Exhibit H) Mark Spitzley, the brother of Plaintiff and Defendant Tom Spitzley, stated that it was his understanding that Defendants-Buyers were purchasing the 40 acres. (Application, Exhibit G)

The totality of circumstances and documents lucidly indicate that Defendants-Buyers purchased a house with 40 acres and that they assumed Michael Spitzley's responsibilities. It would be unfair for Defendants-Buyers to make Michael Spitzley's payments on the 40 acres, while Michael Spitzley reaps the benefit of owning the land. Together, all of these documents build a substantial foundation of evidence not only that Defendants-Buyers' counsel had a reasonable belief that his clients were truthfully entitled to the land, but also that both parties agreed that the 40-acre parcel was being conveyed.

## CONCLUSION

The Court of Appeals and Trial Court erred by ruling that Defendants-Buyers were not entitled to the 40-acre parcel when the face of the deed conveyed the 40-acre parcel to the Defendants-Buyers and that sanctions were appropriate against Defendants-Buyers and their attorney. First, even if the Estate of David Spitzley no longer owned the 40-acre parcel and that property was instead owned by Michael Spitzley, Michael Spitzley conveyed that parcel to Defendants-Buyers when he signed a Personal Representative's Deed conveying the property to them in his representative capacity. Second, Defendants-Buyers presented persuasive authority for extending or modifying Michigan law for the legal proposition that a personal representative who signs a deed on behalf of an estate, also conveys his own personal interest in the property unless he holds back his personal

interest in the property on the face of the deed. This non-Michigan authority is particularly persuasive in this case because there is no Michigan authority addressing this narrow point. Finally, the Trial Court clearly erred when it determined that Defendants-Buyers' position was not supported by "any documentary evidence."

## REQUEST FOR RELIEF

Defendants-Buyers respectfully request that this Court enter a peremptory reversal of the Court of Appeals' decision and render an order that the Court of Appeals erred in determining that Defendants-Buyers failed to make a good faith argument under Michigan law. In its reversal, Defendants-Buyers further request that this Court render a decision that no sanctions be imposed on Defendants-Buyers or their trial counsel.

In the alternative, Defendants-Buyers request that this Court reverse the Court of Appeals decision and render an opinion that Defendants-Buyers were entitled to the 40 acres of farm property under Michigan law, and render that no sanctions be imposed against Defendants-Buyers or their attorney.

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